

CIVIL COVER SHEET

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The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form is approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (See INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Robert Rappucci & Brett Zimmerman

DEFENDANTS

Herker Property Maintenance Inc.

(b) County of Residence of First Listed Plaintiff Chester
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Delaware
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Gallagher Law Group, PC, 171 W. Lancaster Ave., Paoli, PA 19301
610-647-5027

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY - Med. Malpractice <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DI(WC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input checked="" type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):
Fair Labor Standards Act, 29 U.S.C. §201, et seq.

Brief description of cause:
Overtime - FLSA

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
 DEMAND \$ 150,000.00

CHECK YES only if demanded in complaint:
 JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE
 10/15/2010

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IF _____ JUDGE _____

MAG JUDGE

OCT 18 2010

SD

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

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Address of Plaintiff: 401 South Church St. West Chester, PA 19382

Address of Defendant: 2 La France Way Glen Mills, PA 19342

Place of Accident, Incident or Transaction: Glen Mills, PA

Additional Space

(Use Reverse Side For

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐

No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐

No ☒

RELATED CASE, IF ANY:

Case Number: N/A Judge

Date Terminated:

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes ☐ No ☒

CIVIL: (Place in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FEIA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☒ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases
(Please specify)

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases
(Please specify)

2010

I, John A. Gallagher, counsel of record do hereby certify:

☒ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

☐ Relief other than monetary damages is sought.

DATE: October 15, 2010 John A. Gallagher 61914
 Attorney-at-Law Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: October 15, 2010 John A. Gallagher 61914
 Attorney-at-Law Attorney I.D.#

CIV. 609 (6/08)

SD

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

ROBERT RAPPUCCI

BRETT ZIMMERMAN

Plaintiff

v.

HERKER PROPERTY MAINTENANCE, INC.

Defendants

Civil Action No.:

JURY TRIAL DEMANDED

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. §2241 through §2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (x)

Date
10/15/2010

Attorney-at-law
John A. Gallagher

Attorney for
Plaintiff

Telephone
610-647-5027

FAX Number
610-647-5024

E-Mail Address
jag@johnagallagher.com

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROBERT RAPPUCCI

and

BRETT ZIMMERMAN

Plaintiffs

v.

HERKER PROPERTY MAINTENANCE INC.

Defendant

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CIVIL ACTION NO.

FILED

OCT 18 2010

MICHAEL E. KINZ, Clerk
By Dep. Clerk

JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs, Robert Rappucci and Brett Zimmerman, by and through their undersigned counsel, the Gallagher Law Group, P.C., file this Complaint against defendant, Herker Property Maintenance Inc. ("Herker") and in support thereof aver as follows:

PARTIES

1. Plaintiff, Mr. Robert Rappucci, is an adult individual, United States citizen and resident of the Commonwealth of Pennsylvania who currently resides at 401 South Church St., West Chester, PA 19382.
2. Plaintiff, Mr. Brett Zimmerman is an adult individual, United States citizen and resident of the Commonwealth of Pennsylvania who currently resides at 752 Putnam Blvd., Wallingford, PA 19086.

3. Defendant Herker Property Maintenance Inc., is a corporation duly authorized and existing under the laws of the Commonwealth of Pennsylvania, with a registered office address and principal place of business at 2 La France Way Glen Mills, PA 19342.

4. Defendant has at all relevant times had employees engaged in commerce and is an enterprise whose annual gross volume of sales made or business done is not less than \$500,000 (exclusive of excise taxes at the retail level that are separately stated).

JURISDICTION AND VENUE

5. The amount in controversy in this matter is in excess of the arbitration limits of this Court.

6. The Court has jurisdiction over this matter by its authority to hear cases arising under the laws of the United States, pursuant to 28 U.S.C. §1331. This civil action arises under the Constitution and laws of the United States. Plaintiffs are alleging a violation of their rights under the Fair Labor Standards Act, 29 U.S.C. §201, *et seq.* ("FLSA").

7. The Court has jurisdiction over the state law claims set forth herein pursuant to 28 U.S.C. §1367(a), as such claims are closely related to the claims in the action within the Court's original jurisdiction.

8. Venue is proper in the Eastern District of Pennsylvania pursuant to 28 U.S.C. §1391(b), as a substantial part of the events giving rise to the claims occurred in the Eastern District of Pennsylvania.

FACTS

A. The Failure to Pay Plaintiffs Overtime

9. Herker employed Mr. Rappucci and Mr. Zimmerman from 2007 and 2008 respectively, until September 2009.

10. While employed by Herker, the plaintiffs provided labor and other services that qualified them for overtime under both the FLSA and Pennsylvania's Minimum Wage Act, 43 P.S. §§336.1, *et seq.* ("PMWA").

11. However, Herker knowingly and intentionally failed to pay overtime to either plaintiff, in violation of said statutes, instead putting them on a "salary" in an effort to enforce the notion that they were exempt from overtime, even though defendant knew they were not.

18. Plaintiffs seek damages in accordance with FLSA and PMWA for the overtime payments that defendant willfully failed and refused to pay to them.

COUNT I – ROBERT RAPPUCCI and BRETT ZIMMERMAN V. HERKER PROPERTY MAINTENANCE INC. ("HERKER") Violation of the Fair Labor Standards Act

12. Plaintiffs hereby incorporate by reference all other paragraphs of their Complaint as though more fully set forth at length herein.

13. Plaintiffs were not non-exempt employees who were entitled to overtime payments during the entire period that they were employed by defendant.

14. Plaintiffs did not receive overtime payment for such overtime hours.

15. Defendant knew or should have known that it was required to pay overtime to Plaintiffs.

16. Plaintiffs are entitled to receive payment equal to one and one-half their hourly rate (to be determined by dividing their salary by 52 work weeks divided by 40 hours per week) for every hour worked beyond forty hours per week, going back three years in time from the date of this filing, along with attorney's fees, costs, liquidated damages and all other relief appropriate under the FLSA.

WHEREFORE, Plaintiffs, Mr. Robert Rappucci and Mr. Brett Zimmerman, hereby demand judgment in their favor and against Defendant, Herker Property Maintenance Inc., in a sufficient amount to fully compensate them for their losses, along with attorney fees, liquidated damages, costs and such other relief as the Court deems just and appropriate.

COUNT II
ROBERT RAPPUCCI and BRETT ZIMMERMAN v. HERKER PROPERTY
MAINTENANCE INC.
Violation of Pennsylvania Minimum Wage Act

17. Plaintiffs hereby incorporate by reference all other paragraphs of their Complaint as though more fully set forth at length herein.

18. Plaintiffs were not non-exempt employees who were entitled to overtime payments during the entire period that they were employed by defendant.

19. Plaintiffs did not receive overtime payment for such overtime hours.

20. Defendant knew or should have known that it was required to pay overtime to Plaintiffs.

21. Plaintiffs are entitled to receive payment equal to one and one-half their hourly rate (to be determined by dividing their salary by 52 work weeks divided by 40 hours per week) for every hour worked beyond forty hours per week, going back three

years in time from the date of this filing, along with interest, costs, attorney's fees, and all other relief appropriate under the PMWA.

WHEREFORE, Plaintiffs, Robert Rappucci and Brett Zimmerman, hereby demand judgment in their favor and against Defendant, Herker Property Maintenance Inc., in a sufficient amount to fully compensate them for their losses, along with interest, attorney's fees, costs and such other relief as the Court deems just and appropriate.

GALLAGHER LAW GROUP, P.C.

BY:

John A. Gallagher, Esquire
Atty. ID: 61914
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